IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 197 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
M/S. GUJARAT TUBE WELL CO. - Opponent(s)

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Appearance :
MR. MANISH R. BHATT for Applicant(s).
NONE for Opponent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

It is most unfortunate that the Income Tax Appellate Tribunal has no control over its subordinates,

who refer the papers to the High Court for answering the question. It is expected of the Income Tax Appellate Tribunal that it would not leave the administrative work or ministerial work in the hands of some johnnies, who do not understand importance of the work and do not also know as to how they should deal with the High Court.

2. In the present matter, reference has been made by the Income Tax Appellate Tribunal on certain questions along with reference papers, photostat copy of the order passed by the Tribunal is also annexed as Annexure `C'. A perusal of the said order would indicate that it is illegible and things cannot be read conveniently. After putting an extra effort and strain on the eyes, we were required to go through the order. We ask the High Court Registry to send complete papers to the Vice President, Income Tax Appellate Tribunal so that he can go through the Reference papers and return the same back to this Court, as this Court is a Court of records and is required to keep such papers, which otherwise are illegible.

3. It is equally unfortunate that the Department/Revenue while submitting the paper book did not care to see that what they were filing in the name of the paper book. The Tribunal's order is after page 22. We

asked Mr.Bhatt, learned Counsel for the Revenue, to read one single word from the said order, but, he expressed his inability to read anything. If the Counsel for the Revenue is unable to read anything from the said order, then, it would be beyond expectation for anybody to hope that the Judges of the High Court would have supernatural powers and would be able to read the said order. This, in fact, is a misconduct on the part of the Revenue. They must know how to deal with the High Court and how to respect the High Court.

4. Present is a matter where the Tribunal has made reference where the Income Tax Appellate Tribunal, Ahmedabad Bench “C” has made a reference on the following question for opinion of this Court :

> *“1. Whether the Appellate Tribunal is right in law and on facts in holding that depreciation at the rate of 30% is available on dumpers?*
>
> *2. Whether the Appellate Tribunal is right in law and on facts in holding that the Income Tax Officer had rightly allowed investment allowance on the cost of dumpers and water tank treating these*

items as plant?"

5. So far as the first question is concerned, it can straightway be answered in favour of the Assessee in view of the judgement reported in ***165 ITR 160***. It is, accordingly, answered.

6. For the second question, Mr.Bhatt, learned Counsel for the Revenue, submitted that the Income tax Officer went wrong in granting investment allowance on the cost of dumpers and water tank treating these items as plant. He submits that the Assessee is engaged in the work of road construction on a large scale through out the State of Gujarat and in any case, construction of road would not be an industrial activity and would not amount to production or manufacture of an article or a thing. The Assessing Officer was unjustified in granting the investment allowance and the Tribunal was unjustified in reversing the order passed by the Commissioner of Income-Tax (Appeals) under Section-263 of the Income Tax Act.

7. Section-32A of the Act was placed before the Supreme Court for its dues appreciation and interpretation. The Apex Court, in the matter of ***Commissioner of Income Tax vs. N.C. Budharaja And Co. &***

Anr., [***204 I.T.R. 412***], considered the meaning of the words “manufacture”, “production”, “produce”, “article”, “things” in reference to the context and in special reference to Section 32-A of the Income Tax Act. The Supreme Court observed that it would not be possible or permissible to read “production” as referring to construction of dams, bridges, buildings, roads or canals. The Court also observed that the words “construction, manufacture or production of any one or more of the articles and things . . .“ and “construction, manufacture or production of any articles and things . . . ” respectively are to be found used in a particular sense. The Court also observed that it is equally evident that in Sub.Clause-(2) and Sub.Clause-(3) as well as in the Nineth Schedule and Eleventh Schedule, the words “articles” and “things” are used interchangeably. According to the Supreme Court, in the scheme and context of the provision, it would not be right to isolate the word “thing”, ascertain its meaning with reference to law lexicons and attach to it a meaning which it was never intended to give. A statute cannot always be construed with the dictionary in one hand and the statute in the other hand.

The Apex Court finally held that Sub.Clause-(iii) of Clause-(b) of Sub.section-(2) of Section-32A

does not comprehend within its ambit construction of a dam, a bridge, a building, a road, a canal and other similar constructions.

8. If according to the Supreme Court, construction of road is not manufacture or production of an article or thing, the investment allowance would not be permissible. In the present matter, the Tribunal was unjustified in reversing the order passed by the Commissioner of Income-Tax (Appeals), directing the Income Tax Officer to make fresh assessment under Section-263 of the Income Tax Act. Accordingly, we answer the Question No.2 in favour of the Revenue.

9. Looking to the callous conduct of the Officer of the Revenue and submission of such an absurd paper book, we impose costs of Rs.10,000/- on the Revenue, to be deposited by the Department with the High Court Legal Services Committee within four weeks from today. A copy of this order be also sent to the Vice President, Income Tax Appellate Tribunal to see that his house is kept in order.

[***R.S.Garg, J.***]

[***M. R. Shah, J.***]

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